Quid Novi

McGill University, Faculty of Law
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How PFOs Would Work in a Perfect World

McGill

March 22, 2004

Stuffy Wasp LLP
1 Ivory Tower Road
Suite 100
Montréal, Québec
PF0 PF0

Dear Stuffy Wasp LLP,

I greatly appreciated meeting with you to discuss my request for an articling position with Stuffy Wasp LLP for the year 2006. It was truly a pleasure to have had the opportunity to discover your talent and tremendous potential.

After giving serious thought to your candidacy, I regret to inform you that your offer was not retained. I have elected to run away to Bora Bora and to dedicate my talents to knitting silk surfboard covers under the shade of palm trees until my student loans run dry.

Rest assured nevertheless that I was extremely impressed by your firm. I thank you for your interest and wish you continued success in your future endeavours.

Yours very truly,

Nancy Caron
Student, McGill University

In This Issue...

Quid Novi

3661 Peel Street
Montréal, Québec
H2A 1X1
(514) 398-4430

quid.law@mcgill.ca
http://www.law.mcgill.ca/quid

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Envoyez vos commentaires ou articles avant jeudi 5pm à l'adresse: quid.law@mcgill.ca

Toute contribution doit indiquer l'auteur et son origine et n'est publiée qu'à la discrétion du comité de rédaction, qui basera sa décision sur la politique de rédaction telle que décrite à l'adresse:
http://www.law.mcgill.ca/quid/edpolicy.html.

Contributions should preferably be submitted as a .doc attachment. All anonymous submissions will be rejected.

Editor's Note...

Fifty percent of the content of last year's Quid was a variation over two words: funding woes. For those who weren't here, or not entirely here, the debate was over whether the Faculty could offer a quality education, retain good professors and develop research opportunities amid the lingering funding crisis mainly due to the lack of government funding and the tuition freeze since the mid 90s.

Although a year has passed, and a parliamentary commission is coming to an end in Québec City, no clear position has been taken by our Faculty or the LSA. And this year's Quid saw the debates over diversity, grading and nationalism overshadow the persisting problem of higher education funding in Québec.

But luckily enough, someone at the Faculty found a quick fix to make sure everyone would be reminded, on a daily basis, of just how fragile finances are by installing a new ultra-quétaine donor's wall. Made up of wood panels from recycled 1980s station-wagons, the wall makes for a terrific wake-up call.

Unfortunately McGill is not Yale or Stanford, and cannot rely on billion-dollar endowments or private tuition fees to maintain and ameliorate the quality of education and its reputation. The current crisis is threatening what McGill has built over the years, and it has become impossible to even dream of diminishing class size and professor workloads. The new dean and the new LSA should make funding the priority for the next year, and include students in the debate.

The value of our degree is at stake.

Patrick!

For those of view who would like to comment on articles and Faculty life in general, please visit our new discussion forum at http://pub2.ezboard.com/bquidnoviforum

Ratio Decidendi:

RE Students v. The Status Quo (Part V)

by John Haffner and Jason MacLean (Law I)

Thanks to everyone who has signed the "Distinction-Pass-Fail" petition so far, and please continue to reach out to upper-year students to make sure they are aware of what is happening. The pass-fail petition is available for all students to sign at the cash register of Pino's (not to be confused with the earlier petition for Pino's itself).

The next step is to begin a formal dialogue with faculty, and it should be clear by now that students want that dialogue to be highly collaborative, rather than adversarial. We're all in this together. Before opening the dialogue officially, however, we should continue soliciting petitions until we are sure that every student has had the opportunity to sign.

In the meantime, we want to address an important substantive issue – the only dissenting question that is coming back to us at this stage. It seems that most students have had their immediate concerns addressed, so the next question we are hearing is this: doesn't a shift to a 'distinction-pass-fail regime' serve to "externalize the cost of evaluation" – i.e. shift the burden of evaluation – on faculty members themselves?

Externalizing the Cost of Evaluation?

The question is an important one, but with respect we feel that it misses the point.

First, it takes faculty members a lot of time to arrive at a differentiated letter grade, time that could be spent instead offering a few quick qualitative comments without increasing the total time burden.

Second, the status quo does not necessarily insulate professors from heavy evaluation burdens. The current marking regime does not obviate the need for recommendation letters, for example, and in this regard it is already possible for a single professor to be saddled with more than his or her share, even if the writing of letters is always part of the job description. In a small faculty like ours, however, where there are few popular professors who write a disproportionate share of the letters, the real issue of professorial burden is not whether we have a letter-based or 'distinction-pass-fail' system, but whether there ought to be institutional levers in place to distribute the burden more equitably; this question arises in either grading system.

A small suggestion: every student is required to write at least one term essay during his or her time in the faculty. If every professor agreed to supervise a certain number of essays each year, with the expectation that students writing essays might also ask for recommendation letters, the burden on any one professor might be lighter – in either regime. This suggestion is not the whole story, but it is a start. There are many relatively easy ways around this problem.

We only have one life to live, so it's important we live it on our terms, not terms that suit others. And if we start from inside ourselves, in the end the employers benefit too.

Third, and foremost, the very notion of "externalizing evaluation" needs to be unpacked carefully, because it goes to the very heart of why most students find "Distinction-Pass-Fail" appealing in the first place – and why professors should, too.

Students arrive at McGill Law with an enormous breadth of hopes, dreams, and aspirations as first expressed in their personal statements. McGill prides itself on having a much wider entrance gate than most schools, placing great emphasis on the personal statement of each applicant and treating the LSAT as merely optional. But something happens to those ideas in the current regime. As upper-year students attest, over three or four years this emphasis on personal vision is often forgotten or overshadowed by the exigencies of the law firm hiring process, and this external consideration looms large over personal choices and plans. Students who proudly entered law school accountable only to themselves have now externalized – via the ranking system – their self-evaluation and sense of self worth.

The Alternative: Internalized Evaluation

A "Distinction-Pass-Fail" system, as we have mentioned, is not a panacea. But because it removes the constant implicit pressure of the law firm hierarchy, it frees up students to make career decisions based on what they care about.

There is one more lesson from Yale Law, the most successful pass-fail law school, to share in this regard. The students there are encouraged to put aside the question of what a Yale Law student is *supposed* to do according to other people's preconceptions. Instead, each student is encouraged to turn inward to answer a detailed self-assessment that asks that student to chart their preferences against such personal variables as preferred location, practice areas, lifestyle, work environment, clients, etc. The lifestyle section, for example, asks such candid questions like: "When a large firm indicates that you will be expected to bill 2,000 hours/year, do you know what that really means?"

The answers to such questions, and not the temporary, external criterion of a student's ranking relative to his or her peers in a given year, ought to dictate the long-term employment strategy for each three-dimensional human being at our law faculty.

Now it is true that the world will not automatically accommodate our dreams. But it is also true that people who are focused and clear about what they want ▶

to do will often find a way to do it, and if not directly than indirectly: it is possible to get to New York via Toronto, or Toronto via Ottawa, if those cities are ends in themselves. It is also true that if a career plan meets with endless difficulty, it might be worth reconsidering the merits of that plan. As Peter Drucker points out, highly successful people start by figuring out what they are good at, and what they enjoy the most.

In short, the alternative to the current system is to make individual self-awareness the anchor, the absolute centerpiece, of our new career placement strategy, instead of assuming that professorial discretion would have to replace a formal ranking. The Career Placement Office (CPO) might encourage a self-assessment process along the lines of the Yale questionnaire as the starting point; and we could improve on it over time. Then it would be up to the student to figure out the rest through experimentation, with healthy allowances for failure and changes of mind, and at a safe emotional distance from letters of rejection.

From this perspective, we get to interview the firms as much as they get to interview us; we question our vocations as much as they might call to us. Professor Macdonald indicates that 35-40% of law graduates do not go into private practice at all; so for about 35-40% of students, the marking and grading system is utterly irrelevant, which makes its psychic burdens and opportunity costs all the more unfortunate.

In the alternative, if McGill law students are collectively more self-aware, we are likely to be that much more successful as a group, because our enthusiasm and focus will be evident to those who are interviewing us – whether at law firms or elsewhere. It takes a very strong person to be in law's hierarchy and to avoid conflicting feelings about self-worth through an arbitrary process of GPAs, interviews, and rejections. But if we start from self-awareness, we choose the firms – or NGOs, or government institutions, or private companies, or rock bands – that speak to us, and if at first we do not succeed we try again. Or we take what we can get, and then make our move when the better door opens.

Thus the exit gate from McGill, or any law school, is not the final word on our career, and the talent and resourcefulness that brought us here will serve us well out there, too. But we only have one life to live, so it's important we live it on our terms, not terms that suit others. And if we start from inside ourselves, in the end the employers benefit too. According to McGill psychologist Susan Pinker, writing in last week's Globe and Mail, "the degree of fit between a job seeker's values and the firm's culture is tied to how long a person will stay, according to a study by Christian Vandenberghe and a book on hiring by psychologist Victor Cantano and colleagues."

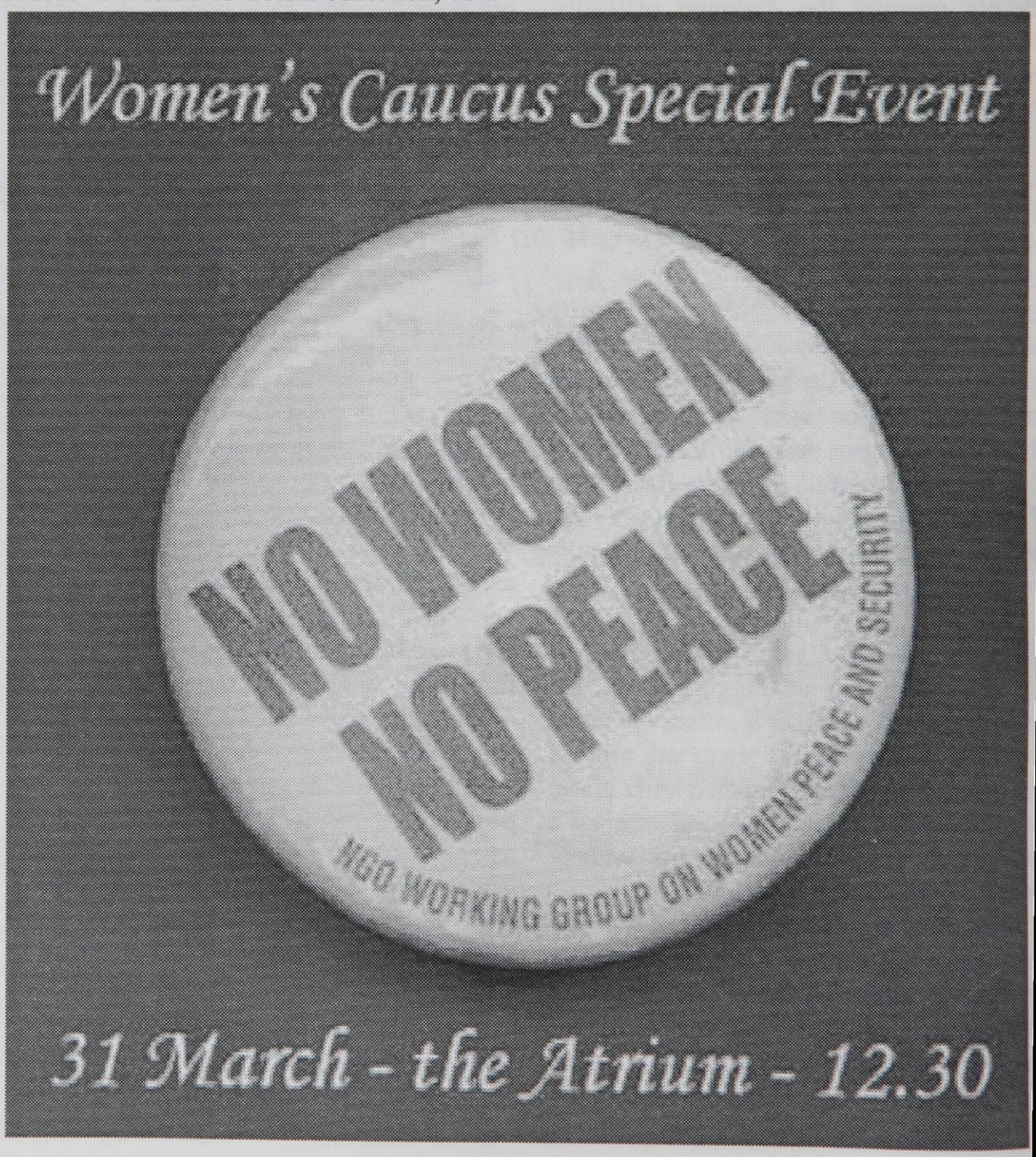
Conclusion

Think back now to Dean Kasirer's first speech as Dean in the fall, and his invitation to view law as cosmos rather than empire.

If we bear in mind the importance of self-awareness, Dean Kasirer's view of law school as a form of liberal education, as a wide-open exploration of cosmos, might well turn out to be deeply practical counsel after all. If we allow our career choices to be determined by our marks and rankings, we have externalized the cost of self-evaluation in the most profound sense. The question, therefore, is not whether pass-fail externalizes the cost of evaluation, but of how much it enables us to regain control of it, inside ourselves.

If we spend three or four years exploring and refining the dreams that brought us here, by asking lots of questions about law, and much outside of law, to gain greater clarity about our personal sense of mission, we are so much more likely to be happy after McGill.

We'll conclude in the same way Professor Macdonald concludes his paper "The Acoustics of Accountability" by quoting Rabbi Hillel's epigram: "If I am not for myself, who will be for me? If I am only for myself, what am I? If not now, when?"■



Conclusive Evidence

by Edmund Coates (Alumnus II)

On Thursday, 25 March, law students put on "Proof: A Play", by David Auburn, in the Moot Court. A joke from the days of the Soviet Union tells of air travel to Warsaw. Upon arrival, travelers from the East would look around, and at first think they took the wrong flight, ending-up in Paris. Upon arrival, travelers arriving from the West would look around, and at first think they took the wrong flight, ending-up in Moscow.

Amateur theatre in Montreal falls under a similar challenge. A season in Montreal presents a wealth of professional theatre, from the most carefully formaldehyded 19th century French farces, to experimental Latin-American drama. So, amateur productions here must reach for higher levels to stand out. I am an active theatre-goer. Thursday, I felt as if I was in Paris. So far this Montreal season, I had seen nine plays. "Proof" stood beyond a good number of them.

Each of the play's four characters has depths and rough edges that drive the plot. Tight wit leavens Auburn's exploration of trust, of identity, and of the tensions between two kinds of truth: emotional truth and intellectual truth.

The play moves forward and backward from the time of the funeral of Robert, formerly a brilliant mathematician. Robert lost his abilities, what he called his machinery, years before, as he fell into mental illness. His younger daughter, Catherine, stayed with him and cared for him, restricting her outside life in the process. This meant giving-up university, despite the fact that she might have inherited her father's mathematical prowess. A lingering worry is that she might also have inherited his tendency to mental illness.

The older daughter, Claire, a controlled, and controlling, currency trader, jets in from Manhattan. She seeks to tidy things up, concerning her father and younger sister, as efficiently as possible. But Hal, a former graduate student of Robert's, intrudes into the picture. He hopes to unearth a flash of genius in the more than a hundred notebooks of scribbling, from Robert's period of illness. Hal's passion for math, his professional ambitions, and his blossoming feelings for Catherine, serve as a catalyst. They serve to heighten the tension Catherine feels, between her aching love for her dead father and her resentment at what she gave-up for him.

As the care-giver daughter, Tara Berish is the axis of the play. She held the audience's attention as she shifted from attraction, to remorse, to mistrust, to resignation, to anger, to hope (while working the tensions with the other characters, and while keeping a certain flatness of affect in the background, to suggest the lurking threat of her father's dual legacy).

In the early scenes, Aleks Zivanovic subtly conveyed the father's love and concern for his younger daughter. In the later scenes, he conserved this, but interwove it with frustration about his mental illness, and guilt. Joshua Parr captured the confident surface of the former graduate student, now junior professor, but showed how this overlay basic insecurities. Together with Tara, he made a growing intimacy shine through, in scenes which at first appearance consisted of suspicion and arguments.

All of these ingredients were pulled together by well thought-out direction and production, by Michelle Dean and Jason MacLean, respectively; crowned by a careful use of props and skilful modulation of pacing. A small flaw was the time given to blackouts between each scene (although the songs played during each of these transitions were aptly chosen).

Thursday evening gave conclusive evidence that the two-year wait since Actus Reus's last production has been capped with rich rewards. If only someone could convince Faculty Council to introduce credits for a theatrical component to the law programme. ■

Quelques précisions à l'intention de Guillaume Lavoie

par Philippe de Grandmont (LLM I, IASL)

J'ai lu avec intérêt l'article « Pierre Falardeau : le dernier des imbéciles » de Guillaume Lavoie, paru dans le *Quid* du 16 mars. Je partage le dédain que l'auteur y exprime à l'endroit des propos récemment tenus par Pierre Falardeau. Je demeure toutefois perplexe devant certaines affirmations sans fondement historique sur lesquels il fait reposer son analyse.

D'entrée de jeu, je remarque que Guillaume traite le Québec et le Canada comme deux entités distinctes... et égales! Ainsi écrit-il : « Je pourrais nommer une série d'éléments d'influence positive que le Canada exerce sur le Québec ». C'est oublier que le Canada est en partie le Québec; c'est oublier aussi que, sauf de très brefs intervalles, tous les premiers ministres canadiens depuis 1968 ont été des Québécois; c'est oublier enfin qu'au moins trois juges d'origine québécoise (parfois plus) siègent à la Cour suprême. En conséquence, si la société québécoise présente des défauts, elle les doit en partie à la société canadienne dans son ensemble.

Passe encore pour l'ironie (ou la maladresse intellectuelle) que révèle cette conception, provenant d'un apologiste du fédéralisme canadien; mais trois autres passages de cet article ont retenu mon ▶

attention en ce qu'ils démontrent une méconnaissance importante du contexte historique de certains événements.

Guillaume doute que le Québec eût ratifié l'ALÉNA en 1994 s'il n'avait pas été membre de la fédération canadienne. Écrire cela équivaut à ignorer que, de toutes les provinces canadiennes, le Québec a toujours été la plus favorable au libre-échange, sous toutes ses formes : nord-américain, interprovincial, voire même canado-européen. Même le PQ s'est montré partisan d'une monnaie commune avec les États-Unis, instrument ultime d'intégration économique – on peut difficilement y voir une volonté de repli sur soi.

Lors des tractations ayant conduit à la signature en 1988 de l'accord de libre-échange Canada-États-Unis, le sentiment pro-libre-échangiste ayant cours au Québec se trouvait en porte-à-faux avec le sentiment anti-libre-échangiste dominant dans le reste du Canada. Lorsque l'ALÉNA, qui n'est que le prolongement logique de l'ALÉ, a vu le jour en 1994, cette même dynamique a refait surface, illustrant à nouveau que le Québec est au Canada le porte-étendard le plus convaincu de la libéralisation des échanges commerciaux.

Guillaume avance que « l'existence du fédéralisme canadien au Québec assure à ce dernier d'être plus au centre sur le spectre politique » puisque, selon lui, « le reste du Canada tend à être plus à droite que le Québec ». Cette affirmation manichéenne ne tient pas compte du *ebb and flow* qui opère naturellement au sein de la vie politique d'une société, favorisant périodiquement l'alternance des partis et des idées politiques.

Ainsi, en Manitoba et en Saskatchewan, les néo-démocrates (socialistes) sont-ils au pouvoir; les libéraux (plus à gauche) ont remplacé les conservateurs en Ontario; et sur la scène fédérale, le NPD bénéficie d'un regain d'intérêt sans précédent depuis plus d'une décennie. Dans le même temps, les Québécois ont porté au pouvoir un parti dont le programme et sa mise en oeuvre ne semblent pas exactement « de gauche ».

Au surplus, même en faisant l'hypothèse (à mon avis fausse) que les Canadiens anglais font systématiquement des choix politiques « de droite » et les Québécois des choix « de gauche », rien ne démontre que les uns influencent les autres dans ce processus. Au contraire : l'histoire nous enseigne que les Québécois –à tort ou à raison– ne font pas grand cas des choix politiques de leurs voisins au moment de faire les leurs.

La troisième affirmation de Guillaume me paraît, avec respect, parfaitement saugrenue: « le fédéralisme canadien impose au Québec des politiques respectant les droits individuels » et si cette influence venait à disparaître, « la législation serait possiblement amendée pour imposer plus de restrictions aux libertés individuelles ». Il est hautement erroné de prétendre qu'il y au Québec une moins grande prédisposition à l'égard de la protection des droits humains qu'ailleurs au Canada. À cet égard, je me surprends d'avoir à rappeler à un étudiant en droit de deuxième année que l'adoption de la *Charte des droits et libertés de la personne* (Québec) précède de sept années celle de la *Charte canadienne des droits et libertés*, et couvre un plus large éventail de droits.

L'histoire nous enseigne que les Québécois -à tort ou à raison- ne font pas grand cas des choix politiques de leurs voisins au moment de faire les leurs.

J'en veux également pour exemple l'attitude québécoise à l'égard d'un motif de discrimination qui a beaucoup alimenté le contentieux judiciaire au cours de la dernière décennie, celui de l'orientation sexuelle. Ce motif a été inclus dans la charte québécoise dès 1977; il ne figure toujours pas à l'article 15 de la charte canadienne (entré en vigueur en 1985), laquelle représente un compromis entre les valeurs parfois divergentes des résidents de tout le Canada. Ce n'est qu'en 1995 que la Cour suprême (*Egan* c. *Canada*), et non le législateur fédéral, a reconnu en l'orientation sexuelle un motif de discrimination analogue aux motifs énumérés à l'article 15, en ayant recours à la technique controversée du *reading in*. Mais les homosexuels canadiens attendent toujours une consécration formelle, écrite, de cette protection, tout comme ils sont en attente du droit au mariage civil.

Au sein de la société canadienne prise dans son ensemble, existe donc toujours une réticence à aller plus loin en ce domaine; toutefois, compte tenu de ses antécédents en la matière (penser également au droit à l'union civile introduit en 2002), il est clair que le Québec n'est pas la source de cette réticence.

On ne peut certes pas démontrer (et ce n'est d'ailleurs pas mon intention) que les Québécois sont « meilleurs » sur le plan des droits humains parce que plus hâtifs à les reconnaître à certains groupes de personnes; en revanche, il est faux de prétendre que le Québec est à la remorque du Canada anglais à cet égard, tout au contraire.

À travers l'article de Guillaume Lavoie on retrouve partout cette volonté de bien distinguer, diviser, les Québécois et les Canadiens anglais; *us and them*. Que l'on souscrive ou non à cette conception du Canada, elle n'en reste pas moins surprenante de la part d'un fédéraliste convaincu, et n'est sûrement pas de nature à convaincre de changer de camp les souverainistes dont le choix s'appuie justement sur une vision de « deux peuples, deux pays ».

En définitive, Guillaume me paraît passionné par le débat politique et assez bien ferré pour s'y engager plus avant. Ceci dit, je ne peux que l'inciter amicalement à plus de rigueur et d'exactitude dans le développement de son propos – quelques clics dans Internet suffisent souvent. Faute de quoi, il risque avant longtemps de se trouver aussi décrédibilisé qu'un certain cinéaste dont il se fait aujourd'hui le critique. ■

The Quid Novi would like to officially congratulate our very own Mike Hazan, incoming president of the LSA.

We hope you'll still talk to us next year.

Night of the Blood Sucking Zombie Trade Unions!

by Finn Makela (Law III)

Over the years, I've become accustomed to the same tired old arguments dragged out to discredit the trade union movement. Guillaume Lavoie's piece in last week's Quid illustrated that these outdated arguments, despite their systematic refutation, continue to have some currency. What is especially remarkable is that they can even be plausibly put forward in what can only be described as a total ignorance of even the most rudimentary facts.

Given Guillaume's resistance to the intrusion of reality on his perspective, it is perhaps futile to answer with a brief remedial lesson in labour history and politics. That being said, I am willing to be charitable in characterising his bluster as an "argument" to which an answer is in order.

Macdonald and Cartier unabashedly used the legislature for the advancement of their own agendas as railway tycoons. Paul Martin continued this tradition in recent years, when as finance minister he was indirectly involved in legislative changes beneficial to his shipping interests.

The sheer number and scope of Guillaume's inaccuracies preclude a systematic treatment, so I will limit myself to a few brief remarks on the role of trade unions in the political field. Among his misplaced perceptions are: (1) that trade unions have a disproportional impact on the political field, (2) that trade unions have no legitimate role to play in parliamentary politics, (3) that strikes are not legitimate tools for obtaining political change, and (4) that the trade unions have manipulated public opinion in Québec.

Trade Unions Have a Disproportionate Impact on the Political Field

Would that this were true. Though historically trade unions have played an instrumental role in the adoption of a wide variety of socially progressive legislation (*see below*) their political power has recently been waning. This is especially true in comparison to their natural counterparts: the business class.

Had Guillaume done even the most elementary research he would have discovered that the shaping of legislative policy has been largely dominated by the business class virtually since Canada's inception. Macdonald and Cartier unabashedly used the legislature for the advancement of their own agendas as railway tycoons. Paul Martin continued this tradition in recent years, when as finance minister he was indirectly involved in legislative changes beneficial to his shipping interests.

Much more influential than individual businesspeople is the business class *as a class* through its representative associations. On the federal level, the Business Council on National Issues played a significant role in defining the discourse of tax cuts and balanced budgets, as well as in the reduction of capital gains taxes. Recently in Québec, the *Conseil du patronat* was the key player in successfully lobbying for the recent amendments to article 45 of the *Code du travail*, facilitating subcontracting without those pesky unions.

These examples are trivial and obvious. I have not dug them out of some secret communist archive and they are easily available for anybody who chooses to do even minimal investigation. Though Guillaume has not showed any interest in actually looking at the facts surrounding his claims, I suggest as a starting point that he read the recent debates of the *Commission parlémentaire sur l'économie et le travail.*

Trade Unions Have No Legitimate Role to Play in Parliamentary Politics

Here Guillaume moves from ignorance of the facts to normative pronouncements that are hopelessly outdated at best and, in some cases, downright scary.

Guillaume argues that trade unions should stick to "protecting workers rights" but not interfere with parliamentary politics. The absurdity of this position is self-evident, since workers' rights are largely determined by legislation. To take two recent examples of the impact of legislation on workers, witness the adoption of *Loi 30*, which takes away the freedom to choose the union of their choice from Québec health care workers. Worse, *Loi 8* takes away the right to form unions entirely from daycare workers and even dissolves the existing unions democratically elected by those workers. Other examples include the defeat of a bill put forward in the House of Commons by the *Bloc Québecois*, which would have seen the Canadian *Labour Code* amended so as to prohibit the use of replacement workers during a lawful strike.

Even the Supreme Court of Canada, hardly a hotbed of communist revolutionaries, recognized the importance to unions of "...government legislation and policy, most obviously in the area of labour relations itself, but also in regard to social and economic policy generally" (*Lavigne v. Ontario Public Service Employees Union,* [1991] 2 SCR at 334). This case is particularly apposite to Guillaume's article, since he claims that as a member of the *Confédération des syndicats nationaux* he was not consulted as to the political positions of his union. A similar question was raised in *Lavigne*, where the appellant objected to his union dues being used to support the New Democratic Party. Laforest, J. pointed out ▶

that unions are democratic organisations and that members who disagree with their policies are free to work within the democratic framework of the union to change them.

Historically, trade unions have been instrumental in the adoption of many Canadian and Québec laws of a social nature. Just a few examples include the universal healthcare system, unemployment insurance, social assistance, old-age pensions, industrial accident and workplace illness legislation, no-fault auto insurance, and universal daycare. Ever sign a residential lease in Québec on one of those mandatory blue forms? You guessed it, the form was designed by the CSN and implemented as a result of its lobbying.

Not only do trade unions have a history of lobbying for social change, but they have often been represented by political parties in legislatures, both federal and provincial. This is not a new phenomenon. At the federal level, the NDP was formed out of the old Co-operative Commonwealth Federation and the Canadian Labour Congress in 1961. In Québec, the Parti ouvrier was affiliated with the Conseil des métiers et du travail de Montréal (predecessor to the FTQ) and elected members to the federal parliament as early as 1906. Other parties with explicit trade unionist agendas included the Independent Labour Party (1931, predecessor to the NDP), Michel Chartrand's Parti socialiste du Québec (1963, affiliated with the FTQ), and the Communist Party of Canada (1927, but known during the period it was outlawed as the Parliamentary Labour Party).

But Guillaume doesn't seem to be too worried if trade unions support "loony left" parties, such as the Union des forces Progressistes, as long as they don't "push the Parti Québecois towards communism". Once again, the facts intrude on Guillaume's fantasy. A cursory knowledge of history would reveal that the PQ and its predecessor the Rassemblement pour l'independence nationale strove for a Québec that was: 1) independent, 2) secular, and 3) socialist. So, the argument that Syndicalistes Progressistes pour un Québec Libre is somehow corrupting the PQ - rather than trying to bring it back to its roots - is dubious at best.

Guillaume would have unions restricted from participating in politics, even if this means removing their freedom of speech. This has already been tried in Québec, and in Canada generally. Luckily, in 1872, parliamentarians were sufficiently enlightened to remove the dispositions of the Criminal Code making membership in a trade union a crime. Of course, Guillaume doesn't want trade unions to be illegal, he just wants them to be silenced. Without giving too much time to Guillaume's laughable "argument" of abus de droit, I should point out that something similar was tried by his intellectual forefather, Maurice Duplessis. Duplessi's 1937 Loi protégeant la province contre la propagande communiste, which basically removed the freedom of speech from trade unionists and other "bolsheviks" was found to be unconstitutional (Switzman v. Elbling, [1957] SCR 285). I am pleased to point out that the attorney who pleaded before the Supreme Court in that case was F.R. Scott, professor of law at McGill and founding member of the CCF.

Strikes are Not Legitimate Tools for Obtaining Political Change

Guillaume trains his formidable ignorance on the question of strikes as instruments of social change. Once you've done your bit at the ballot box, he implies, the elected party should be free to take away your freedom of association, and striking is not a legitimate response.

A few seconds of reflection might lead Guillaume to conclude that strikes and the threat of strikes are two of the most effective tools of capital. In effect, many of the currently contested Liberal policies are the result of the business class threatening to invest their money elsewhere. Capital flight (or capital strikes, as it were) are the stick with which employers threaten the State. This, I presume, Guillaume thinks is legitimate. On the other hand, when workers threaten to take away their contribution to the economy (their labour power) they are nothing better than a gang of anti-democratic thugs. Further treatment of this absurd double standard is obviously unnecessary.

Unions are Manipulating the Public

Here, Guillaume expands his general disdain for workers to the entirety of the public. By some magical communist trick, he seems to think, the trade union movement has hoodwinked the public into changing their opinions on Liberal anti-worker policies. This is, of course, utterly preposterous. Guillaume : ne prends pas tes concitoyens et concitoyennes pour des caves! If they are changing their minds, perhaps it is the consequence of strong arguments on the side of the trade union movement and a government that intentionally undermines the fabric of Québec society.

On the other hand, I suppose it could be Blood Sucking Zombie Trade Unions.

Comradely yours,

Finn Makela ■

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Old-School Racism Still Lives In Montreal

(If Only There Was A Band That Dealt With Semantics!)

by David Perri (Law II)

I'd like to thank Emelie-Anne Desjardins for responding to my original article that dealt with the language-based discrimination that still exists within Montreal. Ms. Desjardins was very civil and intelligent over the course of her response, and I am more than relieved that this debate has been kept on positive terms.

That being said, Ms. Desjardins may have slightly missed what I was trying put forth. At no time did I ever, explicitly nor implicitly, state that les regions are small-minded. I really don't want to get into a game of semantics in order to reply to Ms. Desjardins, but during my almost two years here I've realised that arguing miniscule grammatical turns of phrases are commonplace even at the Supreme Court level. Who I am to shy away from such unabashed fun?

Statement 1: *One of my francophone friends who was with me during the situation dismissed it. He claimed that their small-minded attitude must have been from "les regions". His regions claim was solidified slightly when I spotted the two bobbing up and down to Les Cowboys Fringants sovereigntist anthem, "En Berne," later on during the night.*

These two sentences are strung together but, probably due to an error on my part, they aren't trying to convey the same sentiment. At first, my francophone buddy (who can trace his family tree all the way to New France! Pretty cool!) was quick to bring up the regions claim. I neither agreed nor disagreed with what he said; it was simply his way of analyzing the situation. Only when I saw the two dancing and singing along to "En Berne" did I think they might be from les regions. Not because of their discriminatory remarks earlier on during the night, but because of the sovereigntist aspirations they were holistically a part of by engaging in the "En Berne" phenomena. Now, I know that not all Quebecois from les regions are sovereigntist. I am not making that claim. In fact, I was impressed that Ms. Desjardins used the "French-Canadian" term rather than "Quebecois(e)" in her response. Further, I know that Canada's presence within this province isn't solely limited to Montreal. However, the large majority of sovereigntist claims do in fact come from les regions. I'm not judging it in any way, but due to the overwhelming proliferation of "nation" hyperbole that emanates from outside of Montreal, I assumed these two might be from les regions. But not because they were discriminatory.

Statement 2: *The thing is, If they were indeed from les regions then their behaviour might be understandable, if not excusable.*

Again, I'm not accusing les regions of breeding a deep-seated hatred for Anglophones (except Beauce. Beauce, objectively, has a deep-seated hatred for anything non-French). The way those girls acted was not excusable. I used the word "understandable" not to imply that the regions are small-minded, but to communicate that I understand that discrimination finds itself anywhere, metropolitan status or not.

This was a tedious read, I know, and for that I apologize. It's usually at this point in my Quid ramblings that I lapse into a monologue about a band that is related to the situation. However, as far as I know, there is no group that deals exclusively with semantics, societal or otherwise. I'm actually slight disappointed: how much fun would it have been to discuss Your Enemies Friends (spastic electro-punks from SoCal) or Franz Ferdinand (a great neo new wave band from Scotland) in this context? ■

Let's Get Rid of the Liberal Party! II

par Guillaume Lavoie (Law II)

Je vous invite tous, encore une fois, à nous débarrasser de cette plaie, de cette maladie qui ronge le Canada : le Parti Libéral du Canada (désolé…mais je crois que vous devez commencer à savoir que je n'ai pas l'habitude de mâcher mes mots). Brian Mulroney a affirmé que les libéraux faisaient preuve de tactiques staliniennes. Et bien, je vais tenter de démontrer qu'il y a un fondement à cette affirmation (Non, mais on parle quand même d'un parti qui a remplacé le message du répondeur du bureau d'élection de comté par « Hi ! It's Bob. Please, leave a message ! », afin de se débarrasser de son ex-Ministre du patrimoine).

Le Parti Libéral a toujours agi pour ses intérêts personnels et a toujours essayé d'étouffer ce qui ne favorise pas sa réélection. L'intérêt du pays ou les valeurs démocratiques ont absolument aucune importance pour les membres de cette secte libérale. C'est une manière de gouverner centraliste qui place tout le pouvoir dans le fond de pantalon du Premier Ministre. Jean Chrétien avait plus de pouvoir au Canada qu'en avait Charlemagne, saint empereur romain, en Europe. Le Parti Libéral est tellement assoiffé de pouvoir qu'il tente de prendre le contrôle des provinces. Pierre Elliot Trudeau s'était mis à dos tous les Premiers Ministres provinciaux (dont plus particulièrement Lougheed et Lévesque). Et bien, il en est de même de Chrétien et maintenant de Paul Martin. Même les partis libéraux provinciaux voient que le gouvernement libéral se comporte comme l'EMPIRE de STAR WARS.

En effet, le comportement du gouvernement libéral à l'égard des provinces est la manifestation la plus frappante de l'attitude stalinienne. Cela a lieu depuis 1912 où le gouvernement libéral a commencé à implanter des subventions dans les champs de compétence provinciale comme notamment en matière d'éducation, sous le prétexte que les provinces n'ont pas les ressources financières suffisantes. Ce type de subvention n'a fait qu'augmenter. En 1927, un gouvernement libéral implantait les pensions de vieillesse (intrusion à l'époque d'un champ de compétence provincial). En 1940, le gouvernement libéral adopte une loi sur l'assurance-chômage (autre intrusion !). Vous voulez d'autres exemples ? Les ▶

Allocations familiales (compétence provinciale) implantées par un gouvernement libéral en 1945 ; le Régime de sécurité de vieillesse (compétence provinciale) implanté par un gouvernement libéral en 1952 ; le Régime de pensions du Canada (compétence provinciale) implanté par un gouvernement libéral en 1965 ; les Allocations aux Jeunes (compétence provinciale) implantées en 1973 ; la Loi canadienne sur la santé (compétence provinciale) implantée en 1984 ; etc.

En matière fiscale, les gouvernements libéraux au fédéral n'ont cessé de réduire la capacité des provinces à financer leurs programmes et leurs ministères (dont la santé et l'éducation !). Le Parti Libéral a forcé les provinces en 1941 à lui céder les champs fiscaux des impôts sur le revenu des particuliers et des sociétés pour l'aider dans son effort de guerre. Le gouvernement libéral affirmait qu'il s'agissait d'une mesure provisoire ; devant prendre fin en même temps que la guerre ! (Or, ce ne fut jamais le cas). Le pourcentage des champs fiscaux détenu par le gouvernement fédéral est passé entre 1937 et 1941 de 47% à 81%, tout ce temps sous un gouvernement libéral. En 1973, le gouvernement libéral modifie le système de transferts fédéraux aux provinces, de sorte que ces transferts cessent d'augmenter en fonction de l'augmentation des dépenses. En 1982, le gouvernement libéral impose un plafond à la péréquation. Parallèlement, il continue à diminuer les transferts fédéraux. En fait, le Parti Libéral a toujours pressé le citron ! Et voilà, qu'aujourd'hui, en 2004, après que le Parti Libéral n'ait pas cessé pendant toute l'histoire du Canada à voler aux provinces leurs sources de revenu, le gouvernement Martin nous présente un budget dans lequel le fédéral a un surplus de 4 milliards ajouté au gain de 2 milliards pour la vente de Pétro-Canada tandis que le Ministre Séguin est étranglé par l'impasse budgétaire du Québec et que les transferts fédéraux aux provinces continuent à diminuer. De plus, selon le *Conference Board du Canada*, le surplus de 4 milliards est une sous-estimation du surplus que le fédéral aura réellement. Celui-ci prévoit plutôt que le fédéral aura un surplus de 10 milliards ! Or, selon le même organisme, le déficit total des provinces sera de 5 milliards en 2004-2005. Parallèlement, le financement en santé diminue (contrairement aux recommandations du Rapport Romanow). Bref, le gouvernement fédéral sous le parti libéral, qui s'est accaparé des champs fiscaux de manière immorale, est plein les poches, tandis que toutes les provinces (sauf peut-être l'Alberta qui viendra les rejoindre un peu plus tard) sont en train de s'enfoncer dans les dettes. Ce n'est pas surprenant qu'aucun de ces escrocs refusent de reconnaître le déséquilibre fiscal !

Après cette manière stalinienne d'administrer, après tous les scandales dans lesquels l'argent des contribuables a été odieusement donné aux « amis » du parti, après tout ce que cette plaie nous fait endurer depuis des années, je n'arrive pas à comprendre comment quelqu'un peut désirer voir le Parti Libéral se faire élire aux prochaines élections. Probablement, parce que le Parti Libéral n'existe que pour gagner et qu'il fait tout pour que cela se produise et que cette stratégie fonctionne bien.

Elle fonctionne si bien, que toute la population canadienne qui souhaite voir augmenter le financement en éducation et en santé a oublié que le Parti Conservateur a toujours été tout au long de l'histoire, le seul parti décentralisateur. Le Parti Conservateur a toujours voulu donner davantage de pouvoir aux provinces, a toujours respecté leurs champs de compétence et a toujours fait en sorte de leur donner les sources de financement nécessaires en santé et en éducation sans se servir de cela pour s'introduire dans un champ de compétence provincial. Aujourd'hui encore, le chef du Parti Conservateur, Stephen Harper, ainsi que les deux autres ex-candidats à la course au leadership, Belinda Stronach et Tony Clement, reconnaissent l'existence du déséquilibre fiscal et s'engagent à prendre des mesures nécessaires pour l'enrayer.

Vous aurez compris que je ne suis pas impartial et que par conséquent cet article ne l'est pas davantage. Mais tel n'est pas son but. Son but est uniquement de tenter d'illustrer qu'une dictature douce reste une dictature et que par conséquent le gouvernement libéral gère ce pays en dictateur, en saint empereur romain et en souverain et fait fi du fait que les Canadiens croient en la démocratie. Et bien, j'espère qu'ils vont lui rappeler que le Canada est une démocratie et qu'ils ont la capacité de foutre le Parti Libéral dehors…Car, après tout, si tout ce que nous savons sur le Parti Libéral ne fait pas changer les sondages en faveur des autres partis, qu'est-ce que ça va prendre pour changer de gouvernement ? Des attentats comme ceux de Madrid ? ■

Skit Nite: A Resounding Success

by Ken McKay (Law III)

Over a week ago McGill Law continued a long-standing tradition of hosting Skit Nite, a charity event that showcases the talent of our students and faculty. This year's show once again had a bit of everything – comedy, dance, music, and video. The night generated a lot of laughs and a lot of pride for the people who participated, both on stage and behind the scenes. The students and faculty should be proud that we have such a dedicated and talented group of individuals whose contributions as writers and performers gave substance to the evening. Without their creativity the evening would never have taken place. While we should all be appreciative of their talent as well as their dedication, there are others who you may not be aware of who played a huge role in making the show happen notably: Jessica Braun and Alexandra Stockwell, who as stage managers coordinated the rehearsals and the show from backstage and ensured the seamless transition between acts; Eleasha Sabourin and Erin Easingwood, who as technical directors oversaw the sound, lighting and video interfacing throughout the night and delivered flawlessly timed event. Jessica, Alexandra, Eleasha, and Erin deserve our special thanks for having chosen to work behind the scenes amidst all the stress, chaos, and frantic pace, and missing the opportunity to watch the show in tranquility from the audience. Their efforts ensured the evening was a success and we are eternally thankful.

From a financial perspective the show was also a success. This year Skit Nite raised over $19,000. As many of you are aware, Skit Nite has been a proud contributor to local charities for many years. This year we will be able to continue and expand that tradition as a result of the efforts of several important people: notably Erica Solomon, Gino Caluori, Lainy Destin, Catherine Lambert and Saminda Pathmasiri, who formed the fundraising committee. The fundraising committee (headed by Erica) generated in excess of $9,000 from firms and businesses, and the silent auction (ran by Catherine and Saminda) generated in excess of $2,000. Ticket sales contributed in excess of $8,000 to the event and this is attributable to the tireless efforts of David Dubrovsky and Lani Rabinovitch who put in countless hours selling tickets (designed by David and Dennis Galiastatos) in the Atrium. Time was also donated by people who ensured that costs were kept at a minimum - most notably Marc-Andre Beaudoin who designed and laid out the program, and Fred Fisher who edited the Private Law Dictionary videos from information gathered by Pierre-Olivier Savoie. Local charities will benefit greatly from the funds that you all had a hand in generating and preserving. Bravo and thank you!

For those of you who would like to have something by which to remember the show or for those of you who missed the event there will be a professionally filmed and edited DVD of the evening on sale shortly (at a cost of $10). Only fifty copies were ordered so get your request in as soon as possible (make checks payable to Skit Nite Committee and leave them at the LSA).

We hope you enjoyed the evening as much as we enjoyed putting it together. We wish future Skit Nite coordinators the fortune of having such a great team to work with in making this event a success. ■

Take it from Stalin

by Edmund Coates (Alumni II)

A striking feature of human rights talk, in the past hundred years, is the extent to which it is engaged in by those who are, in fact, the fiercest opponents of rights. Yet, I was surprised to come upon even Joseph Stalin praising rights. Maybe a touch of hypocrisy is hardly a flaw, compared to artificially created famine, war crimes, as well as the enslavement and execution of tens of millions.

Stalin delivered the speech, extracted below, to an assembly of senior Communist Party members. They must have known what was going on in their country. They must all have been collaborating in it. Who was he trying to convince? I suppose you can achieve equal rights by no one having any rights.

"On the Draft Constitution of the U.S.S.R.: Report Delivered at the Extraordinary Eighth Congress of the Soviets of the U.S.S.R. November 25, 1936" (in J. Stalin. *Leninism*. London : G. Allen & Unwin. 1940. p. 572-573)

[...]

The fifth specific feature of the draft of the new Constitution is its consistent and thoroughgoing democratism. From the standpoint of democratism bourgeois constitutions may be divided into two groups: One group of constitutions openly denies, or actually nullifies, the equality of rights of citizens and democratic liberties. The other group of constitutions readily accepts, and even advertises, democratic principles, but at the same time it makes reservations and provides for restrictions which utterly mutilate these democratic rights and liberties. They speak of equal suffrage for all citizens, but at the same time limit it by residential, educational, and even property qualifications. They speak of equal rights for citizens, but at the same time they make the reservation that this does not apply to women, or applies to them only in part. And so on and so forth.

What distinguishes the Draft of the new Constitution of the U.S.S.R. is the fact that it is free from such reservations and restrictions. For it, there exists no division of citizens into active and passive ones; for it, all citizens are active. It does not recognize any differ-▶

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ence in rights as between men and women, "residents" and "non-residents", propertied and propertyless, educated and uneducated. For it, all citizens have equal rights. It is not property status, not national origin, not sex, nor office, but personal ability and personal labour, that determines the position of every citizen in society.

Lastly, there is still one more specific feature of the draft of the new Constitution. Bourgeois constitutions usually confine themselves to stating the formal rights of citizens, without bothering about the conditions for the exercise of these rights, about the opportunity of exercising them, about the means by which they can be exercised. They speak of the equality of citizens, but forget that there cannot be real equality between employer and workman, between landlord and peasant, if the former possess wealth and political weight in society while the latter are deprived of both - if the former are exploiters while the latter are exploited. Or again: they speak of freedom of speech, assembly, and the press, but forget that all these liberties may be merely a hollow sound for the working class, if the latter cannot have access to suitable premises for meetings, good printing shops, a sufficient quantity of printing paper, etc.

What distinguishes the draft of the new Constitution is the fact that it does not confine itself to stating the formal rights of citizens, but stresses the guarantees of these rights, the means by which these rights can be exercised. It does not merely proclaim equality of rights for citizens, but ensures it by giving legislative embodiment to the fact that the regime of exploitation has been abolished, to the fact that the citizens have been emancipated from all exploitation. It does not merely proclaim the right to work, but ensures it by giving legislative embodiment to the fact that there are no crises in Soviet society, and that unemployment has been abolished. It does not merely proclaim democratic liberties, but legislatively ensures them by providing definite material resources. It is clear, therefore, that the democratism of the draft of the new Constitution is not the "ordinary" and "universally recognized" democratism in the abstract, but socialist democratism.

[Comrade Stalin's appearance on the rostrum is greeted by all present with loud and prolonged cheers. All rise. Shouts from all parts of the hall: Hurrah for Comrade Stalin! Long live Comrade Stalin! Long live the Great Stalin! Hurrah for the great genius, Comrade Stalin! Vivat! Rot Front! Glory to Comrade Stalin! (at page 561)] ■

Putting Things into Perspective, and Other Concepts Not on the Exam

by Jameela Jeeroburkhan (Law III)

It is about this time in the academic calendar when I wonder why I have been a student for twenty years. You would think I would have learnt that even the most fascinating course includes some sort of evaluation process. The student cannot just sit and learn; we have to produce, and usually for every class at the same time.

So how do I get through this time of year without regretting every decision I have made that involved returning to university? I go to the museum! There are a number of good exhibitions around town these days that are relatively close to the Faculty and worth the hour or two down away from the books to invigorate the spirit.

Jack Beder: City Lights at the Ellen Gallery at Concordia University is only on until **3 April** (Maisonneuve West, between Bishop and Mackay on the south side, Tues-Sat, 12h00-18h00). It is a must-see for anyone interested in Montreal history and art. Beder emigrated from Poland in 1926. Throughout the 30s and 40s, he painted scenes of downtown Montreal cafés and nightclubs as well as street scenes of familiar Plateau streets that were then the centre of 'the Jewish quarter' (St-Laurent, Roy, Esplanade). Archival photos, posters and other items dating from the same era complement the wide collection of paintings and drawings. Cab Calloway at the Cotton Club, the first all African-Canadian jazz band and advertisements, as someone beside me remarked, published "avant la Loi 101!" It's an amazing glimpse of depression and wartime Montreal, which is also totally FREE!

Place à la magie! Forties, fifties and sixties in Québec at the Musée d'art contemporain de Montréal pretty much speaks for itself (185 Ste-Catherine West, corner Jeanne-Mance, north side, Tues-Sun, 11h00-18h00, Wed, 11h00-21h00). Part of the permanent collection, there are diverse paintings and sculptures from many of the most important Quebec artists of the last century. I prefer the abstract stuff, particularly a striking piece in two panels by Jacques Hurtubise that is just a perfect blotch of turquoise on red background. Somehow it gives new meaning to *forum non conveniens*...The MACM is only $3 for students who do not forget their ID and FREE for everyone on Wednesday after 6pm.

Permanent collection at the Musée des Beaux-Arts also holds some gems (down the hill on Sherbrooke between Crescent and Bishop, same hours as MACM). In the European Art section, there is this great painting of a woman lounging opulently on a sofa by Kees Van Dongen. There are others by Montreal artists; like Prudence Heward, who was associated with the Beaver Hall group of Montreal women artists in the 1920s. There are interesting recent acquisitions, too. Just wander and stare at what you like. Slightly more costly, entry is $6 for students with ID and $3 on Wednesdays after 17h30.

I must admit in all honestly, I am no art expert. I never studied art history and rely on those much more knowledgeable than me to explain what an etching is and how Picasso changed the world. In fact, I have Dean Kasirer to thank for reminding me about the beauty and calm of museums and galleries, particularly when you are soaked deep in words and papers. But, as I have never allowed my lack of knowledge of something to prevent me from enjoying it (look at law studies!), I recommend this as an excellent way to enjoy yourself amidst lots of other busy activities you may not enjoy. Sure, there are many effective ways to unwind, but this one will hopefully not leave you with a headache the morning after. ■

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Sign up period:

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TUTORIAL LEADERS / AUXILIAIRES D'ENSEIGNEMENT

2004-2005

***Legal Methodology Teaching-Group (1st year)* (4 credits)**

Twelve upper year students are required to for the Legal Methodology Teaching Group (first-year). These tutorial leaders are responsible for a portion of the instructional component of the *Introductory Legal Research* course. Tutorial Leaders will work in teams of three, under the general supervision of a team of two professors, although each Tutorial Leader will be individually responsible for a group of 12-14 first-year students. Tutorial Leaders are primarily responsible for instruction on research methods, including the setting of specific research assignments, and for the written and oral components of the course. All tutors will meet with first-year students on a regular basis. Tutors will also meet weekly with the Methodology Programme Instructor. Tutors receive a letter grade in this course.

In addition to the teaching component of the course, all tutorial leaders are also responsible for assisting first-year students in adapting to their studies in the Faculty of Law. Their responsibilities therefore include encouraging the creation of a supportive environment as well as detecting and addressing emotional or academic difficulties in adapting to law school.

Prerequisites: At least four full-time terms in the Faculty (preference will be given to students in third year), academic achievement in the Faculty of Law, fluency in English and French, leadership qualities, strong interpersonal skills, demonstrated ability in legal research and writing, and teaching experience. Selection is based on applicants' resume, transcript and an interview. Students may indicate in their application whether they would prefer to teach an English section, a French section or a bilingual section.

The course will be under the direct supervision of Professor Blaine Baker, faculty member responsible for the Legal Methodology Programme, and Me Helena Lamed, Programme Instructor.

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Eight upper year students are required for the Legal Methodology Teaching Group (Second Year). These students are responsible for a portion of the instructional component of the *Legal Writing, Mooting, and Advanced Legal Research* course, including instruction on research methods and the setting of research and writing assignments. Each tutor will be individually responsible for a group of 16-18 second-year students. Tutors meet with their group of second-year students on a regular basis. They will also meet weekly with the course instructor. All second-year groups are taught in both English and French. Tutors are assigned a letter grade for their performance in this course.

Prerequisites: At least four full-time terms in the Faculty (preference will be given to third year students), fluency in English and French, academic achievement in the Faculty of Law, interpersonal and organisational skills, demonstrated ability in legal research and writing, teaching and mooting experience. Selection is based on applicants' resume, transcript and an interview.

The course will be under the direct supervision of Professor Blaine Baker, faculty member responsible for the Legal Methodology Programme, and Me Helena Lamed, Programme Instructor.

Please submit your application to the office of the Associate Dean Academic. You should include: (i) a cover letter specifying the programme to which you are applying and the reasons motivating your application, and (ii) a *curriculum vitae*, including the names of referees if possible. You do not need to include a transcript. **The deadline for applications is Wednesday March 31st**. Interviews will take place during the week of April 5th and selected applicants will be contacted by email.